

ERIC P. NEWMAN NUMISMATIC EDUCATION SOCIETY

6450 Cecil Avenue, St. Louis, Missouri 63105

May 4, 1982

Mr. Bill Crist  
P. O. Box 98903  
Seattle, WA 98188

Dear Mr. Crist:

Under the Internal Revenue Code, Section 170, an organization which receives a substantial part of its support from the public qualifies as a donee for the "50% limitation" category. IBNS is such an organization. Thus, 50% of the donor's income for any year is the maximum amount of deductible gifts to it and similar organizations. The 20% limit on deductions is thus not applicable to gifts to IBNS.

The 30% limitation on gifts is a limit on capital gain gifts only (those where the value at the time of donation is in excess of cost basis). If those capital gain gifts are in securities, then up to 30% of income may be so donated and deducted. If those gifts are in tangible property (coins or paper money), then the donee organization should be one which customarily would retain such tangible items for its charitable purposes to make the gifts deductible at their value when given. Even if the 30% capital gain gift limitation is reached, other gifts at cost basis are deductible to reach the 50% limitation.

This is a technical matter which I hope I have clearly explained in answer to your inquiry to IBNS.

Sincerely yours,

Eric P. Newman

jh

cc: Mr. Greg Gaitens  
P. O. Box 1222  
Racine, WI 53405

# CRIST

POST OFFICE BOX 98903  
SEATTLE, WASHINGTON 98188  
U. S. A.

Greg Gaitens, IBNS US Auctioneer

Dear Greg,

Will try to "clean up my act" next time relative to listing notes in alphabetical order etc.

Have question on Donations/contributions

Per IRS rules - are you all a "50% of adjusted gross income" or a 20%<sup>or 30%</sup> of adjusted gross income" charity/educational organization or what?

If the question is not clear see page 89, P "Limit on Deductions" of IRS Publication 17 (Rev Nov 81) (Blue Book entitled Your Federal Income Tax for Individuals.) Since I also make other contributions I have to watch the percentages some years. Thanks.

Bill

4/17-82

I don't understand what he  
is talking about. Please  
explain so that a "dummie"  
with only a masters degree  
can understand.

I would like to put  
your info in the ~~last next~~  
Newsletter for the benefit  
of the CIS members.

Thank

R

**¶ 3025A Charitable Contributions Deduction for Nonitemizers.** For tax years after 1981 but before 1987, individuals who do not itemize personal deductions are nevertheless permitted to deduct a percentage (up to a fixed dollar amount) of charitable contributions.

(1) For tax years beginning in 1982 or in 1983, an individual will be allowed to deduct 25 percent of his first \$100 of charitable contributions made during the year, up to a maximum deduction of \$25 (25 percent of up to \$50 in contributions for a married individual filing a separate return).

(2) For 1984, the 25 percent limit applies to the first \$300 of charitable contributions, with a maximum deduction of \$75 for the year (25 percent of up to \$150 in contributions for a married individual filing a separate return).

(3) For 1985 and 1986, the deduction is 50 percent and 100 percent of contributions respectively. There is no maximum deduction amount, other than the general limitation of 50 percent of adjusted gross income (¶ 3026). The Internal Revenue Service is required to promulgate substantiation requirements for claiming the deduction (.05).

**Example.** In 1982, Kelly Greene, an unmarried taxpayer who does not itemize personal deductions, makes a \$200 charitable contribution to her church, a qualified donee. She is entitled to deduct \$25 (25% of the first \$100) as a charitable contributions deduction for the 1982 tax year. If she was a married taxpayer filing a separate return, her charitable contributions deduction would be limited to \$12.50 (25% of the first \$50).

.01 Code Sec. 170(i), added by the Economic Recovery Tax Act of 1981 (P.L. 97-34).

.05 Conference Committee Report accompanying the Economic Recovery Tax Act of 1981 (P.L. 97-34).

**¶ 3026 Limitations on Deductions for Individuals.** The deduction ceiling for most charitable contributions in the case of individuals who itemize personal deductions is 50 percent of the contribution base. The contribution base is "adjusted gross income," computed without regard for any net operating loss carryback.

#### ● *The 50-percent limit*

The deduction allowed for contributions to (but not for the use of) the following types of organizations qualifies for the maximum 50-percent deduction:

- (1) a church or convention or association of churches;
- (2) educational institution with a regular faculty, curriculum and student body in attendance;
- (3) a hospital the principal function of which is providing medical or hospital care or a medical research organization directly engaged in continuous active research in conjunction with a hospital if, during the calendar year in which the contribution is made, the organization is committed to spend the contribution for medical research before January 1 of the fifth calendar year beginning after the date of the contribution;
- (4) a public or government-supported organization holding and investing property for a college or university which is owned by an agency or instrumentality of a state or political subdivision;
- (5) a state, federal or local governmental unit, if the contribution is made for exclusively public purposes;
- (6) an organization normally receiving a substantial part of its support from the public or a governmental unit;
- (7) a private operating foundation (see ¶ 4527A);
- (8) any other private foundation which distributes all contributions it receives to public charities (or makes certain other qualifying distributions) within 2½ months after its year's end;
- (9) organizations normally receiving (a) more than one-third of their support in each taxable year from the public in the form of contributions, membership fees and

the like, and (b) not more than one-third of their support from gross investment income (also known as Code Sec. 509(a)(2) organizations) and

(10) community foundations which pool all contributions into a common fund and allow the contributor to designate the recipient charity, income from the pool being distributed within  $2\frac{1}{2}$  months after the taxable year in which it was realized and corpus attributable to any donor's contribution being distributed to a charity not later than one year after the death of the donor (or his surviving spouse if she has the right to name recipients of corpus).

A home health care organization is not a hospital ((3), above) for purposes of the maximum 50-percent deduction (.05).

#### ● The 20-percent limit

A 20-percent-of-adjusted-gross-income limitation applies to:

(1) gifts to "other" (non-50-percent) foundations and organizations (veterans' organizations, fraternal organizations, public cemeteries, certain private nonoperating foundations) and

(2) gifts *for the use of* the above 50-percent-deduction organization donees.

The deduction limit is the lesser of (1) 20 percent of the taxpayer's contribution base (see above) or (2) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions qualifying for the 50-percent deduction ceiling (including carryovers).

A contribution is deductible to the extent of 20 percent if it is made *to or for the use of* an eligible organization. Thus, contributions to a trust whose funds must ultimately be for the use of charitable, etc., organizations are deductible. It is not necessary that the trust itself be an eligible donee.

See, also, ¶ 3054 and 3061.

#### ● The 30-percent limit

A deduction limitation of 30 percent of adjusted gross income applies to contributions of capital gain property that do not have to be reduced under the appreciated property rules at ¶ 3039. This rule applies, generally, to contributions of appreciated stocks and bonds that have been owned by an individual for more than one year, and that are donated to organizations qualifying for the 50-percent limitation above.

In this situation, a special election is available whereby the taxpayer may elect to have the 50-percent maximum limitation, rather than the 30-percent limitation, apply to contributions of capital gain property if he reduces the amount of his charitable contributions by 40 percent of his potential long-term capital gain as noted at ¶ 3039.

#### ● Order for applying limits

The order in which these deduction limitation rules are applied affects both the amount of the deduction and the amount, if any, of the carryover (see the discussion on carryovers at ¶ 3047-3049, below).

In applying the limits, contributions qualifying for the 50-percent limit are used first. Contributions qualifying only for the 20-percent limit are used second, but these may not exceed the portion of the 50-percent maximum allowance that remains after applying the contributions that qualify for the 50-percent limit. After the amount of the contributions available for deduction under the 50-percent and 20-percent limits has been determined, any contributions of capital gain property are reduced to 30 percent of adjusted gross income. This reduction is not made, however, if the special election is made to apply the 50-percent rather than the 30-percent limit and to make the reduction for 40 percent of potential long-term capital gain. See ¶ 3039, below.

**Example (1):** Taxpayer R. E. Smith has adjusted gross income for 1981 of \$50,000. In July of 1981, he gave \$2,000 in cash and land worth \$30,000 to his church. The land had a basis to him of \$10,000 and had been held by him for investment purposes for more than a year. The maximum possible allowance is

\$25,000 (50% of \$50,000 adjusted gross income). The gift of the land does not have to be reduced under the appreciated property rules by 40% of the potential long-term capital gain since it was donated to a 50% deduction organization. The total contributions to 50% deduction organizations in this example (\$32,000) exceed the \$25,000 maximum deduction. However, the land gift is subject to the 30% limit and must be reduced to \$15,000 (30% of \$50,000 adjusted gross income). Accordingly, Smith's 1981 charitable contributions deduction is limited to \$17,000 (\$2,000 plus \$15,000).

**Example (2):** Assume that taxpayer Smith in Example (1) also gave \$5,000 in 1981 to a private nonoperating foundation to which the 20% limit applies. Since the contributions to 50%-deduction organizations before application of the 30% limit exceed the \$25,000 maximum allowance, none of the \$5,000 contribution to the 20%-limit organization is deductible.

**Example (3):** Assume the same facts as in Example (2) and also that taxpayer Smith elects the 50% limit instead of the 30% limit for the land contribution. As a result of making this election, he must reduce the amount of his land contribution by 40% of the potential long-term capital gain, or \$8,000 (40% of the \$20,000 excess of \$30,000 value over \$10,000 basis). Now the total of his 50% organization contributions is \$24,000 (\$2,000 cash plus \$22,000 for the land). Since his \$25,000 maximum is not yet used up, Smith may deduct \$1,000 of his \$5,000 contribution to the private foundation (20% organization).

.01 Reg. § 1.170A-8.  
.05 Rev. Rul. 76-452, 1976-2 CB 60.

**¶ 3031 Deduction for Corporations.** A corporation may deduct contributions or gifts made to or for the use of specified organizations in an amount up to five percent (10 percent for taxable years beginning after 1981 (.05)) of its taxable income as computed without the benefit of the special deductions for dividends received, dividends paid, the contributions deduction, any net operating loss carryback, or the capital loss carryback to the taxable year.

If the contribution is made to a trust, community chest, fund, or foundation, it is deductible only if it is to be used within the United States or any of its possessions exclusively for charitable, etc., purposes. Contributions to a domestic charitable corporation are deductible even though used in a foreign country (.07).

A charitable contribution made by a closely held corporation is taxable as a constructive dividend to the corporation's shareholders only if a property or an economic benefit is received by the shareholders or their families as a result of the contribution (.08). This rule is applicable, generally, where the recipient is a private foundation controlled or affiliated with the shareholders. It should not be construed as preventing shareholders from selecting the charities that are to receive corporate contributions.

#### C C H

Stockholders in closely held corporations can make contributions of stock in the closely held corporation and can arrange to have the stock redeemed by the charity from the corporation without having the redemption being taxed to them. The Internal Revenue Service has ruled that it will treat such arrangements as a gift of the stock to the charity by the shareholder, and not as a taxable redemption of the stock by the shareholder followed by a donation of the proceeds by the shareholder, even though the transactions are made as part of a plan (.09). However, the Service emphasized that it will treat the redemption proceeds as income realized by the donor-stockholder if the donee is legally bound or can be compelled by the corporation to surrender the shares for redemption. Thus, there will not be a redemption so long as the charity is not legally bound to go through with the redemption, even though the redemption is part of a pre-arranged plan.

The types of organizations to which deductible contributions may be made are listed at ¶ 3051. Some contributions, too, may qualify as business expenses (see ¶ 2300). But no business expense deduction is allowed to any taxpayer for any contribution or gift that would be allowed as a contribution deduction were it not for the percentage limitation or

for the requirement that payment be made within the taxable year (.15). However, see § 3037 and following for gifts of appreciated property.

**C C H**

**In the case of closely held or family corporations,** it may be desirable to have the corporation instead of the stockholders make contributions where the corporate rates are higher than those applicable to the shareholders' income. However, it must be remembered that the limit on corporate contributions is five percent (10 percent for taxable years beginning after 1981) of its taxable income.

A corporation may claim charitable contributions deductions for amounts paid to qualified religious, charitable, and educational organizations designated by its employees. The designating employees are merely performing an administrative function and are not in receipt of gross income (.20).

.01 Code Sec. 170(b)(2); Reg. § 1.170A-11.

.05 Code Sec. 170(b)(2), as amended by the Economic Recovery Tax Act of 1981 (P.L. 97-34).

.07 Rev. Rul. 69-80, 1969-1 CB 65.

.08 Rev. Rul. 79-9, 1979-1 CB 125, revoking Rev. Ruls. 68-658, 1968-2 CB 119, and 75-335, 1975-2 CB 107, and following the precedent of *H.J. Knott*, 67 TC 681, CCH Dec. 34,219 (Acq.).

.09 Rev. Rul. 78-197, 1978-1 CB 83. In this ruling, the IRS announced that it will accept the decision of *D.D. Palmer*, 62 TC 684, CCH Dec. 32,739 (Acq.), aff'd, CA-8, 75-2 USTC ¶ 9726, 523 F2d 1308.

.15 Code Sec. 162(b).

.20 Rev. Rul. 67-137, 1967-1 CB 63.

**¶ 3033 Payment Following Close of Taxable Year.** Corporate contributions are deductible only for the year within which payment is made. However, an accrual-basis corporation may elect to accrue a contribution paid within two and one-half months after the close of the taxable year if its board of directors authorized the contribution during the taxable year. Election to treat such contribution as having been paid during the taxable year must be made at the time of filing the return for such year.

The corporation must attach to its return, when filed, a written declaration that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. It must verify the declaration by a statement signed by an officer authorized to sign the return that it is made under the penalties of perjury. In addition it must attach to its return when filed a copy of the resolution of the board of directors authorizing the contribution. However, the IRS has agreed to follow the precedent of a Tax Court decision in which this requirement was not controlling (.05). In this case, a copy of the board's resolution authorizing the charitable contribution, given to an Internal Revenue Service agent during a subsequent audit, and the verified statement from an officer of the corporation, made after a trial conference four years later, were sufficient to permit the election.

**C C H**

**If an accrual-basis corporation customarily makes contributions for charitable purposes** of up to five percent (10 percent for taxable years beginning after 1981) of its taxable income as a matter of policy, it might be well to authorize specific contributions before the close of the taxable year in order to bring the contributions up to the five percent (10 percent for taxable years beginning after 1981) limit, even though they will not be paid until the following year. The corporation may elect to treat all, or only a portion, of the contribution authorized in one year and paid within the first two and one-half months of the next year as a deduction of the year in which authorized (.10).

.01 Code Sec. 170(a); Reg. § 1.170A-11(b).

.05 *Columbia Iron and Metal Co.*, 61 TC 2, CCH Dec. 32,159 (Acq.).

.10 *Faucette Co., Inc.*, 17 TC 187, CCH Dec.

18,459 (Acq.).

**¶ 3035 Time of Making Contribution.** Ordinarily, a contribution is considered made at the time delivery is effected. In the case of a check, the unconditional delivery (or mailing) of a check that subsequently clears in due course will constitute an effective contribution on the delivery or mailing date. Payment by check by a cash-basis taxpayer supports deduction for the year the check was mailed, even though it is not cashed by the recipient organization until the following year (.05).

As to contributions involving a business purpose, see ¶ 2300.

**¶ 3033 Code Sec. 170**

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If the check contributed is dishonored upon presentation to the drawee, however, there is no payment (.15). The charitable deduction is allowable only for the year in which the check is paid or sufficient funds are deposited to cover the check. Similarly, if the payee organization agrees not to cash the check until the year after delivery, there is no current payment (.20).

A contribution to honor a pledge is also made at the time the contribution is actually paid (.27).

See § 3042 for the rules on the time of making a contribution in the case of stocks and bonds.

.01 Reg. § 1.170A-1(b).

.05 *E.B. Witt Est.*, DC Fla., 56-1 USTC ¶ 9534, 160 FSupp 521.

.15 Rev. Rul. 54-465, 1954-2 CB 93; *M. J. Spiegel Est.*, 12 TC 524, CCH Dec. 16,898 (Acq.).

.20 *L.M. Fischer*, 14 TC 792, CCH Dec. 17,636 (Acq.).

.27 Reg. § 1.170A-1(a)(1).

### **Code Sec. 170. Charitable, etc. Contributions—Property**

Contributions of property...	¶ 3037	Problems in valuing gifts of property...	¶ 3042
Appreciated ordinary income property...	¶ 3038	Bargain sales to charitable organizations...	¶ 3043
Appreciated capital gain property...	¶ 3039	Annuities purchased from charities...	¶ 3043A
Combined ordinary income and capital gain property...	¶ 3040		
Gifts of use of property and other nontrust partial interests...	¶ 3041		

**¶ 3037 Contributions of Property.** The amount of the charitable contribution available for a contribution of property can vary depending upon the nature of the property being donated to the charity and, in some cases, upon the nature of the charitable organization and how the organization will use the donated property.

In the case of property that has depreciated in value, the amount of the deduction is limited to the fair market value of the property at the date of the contribution. Furthermore, a donor may not claim any type of loss deduction on the transaction (.05).

In the case of property that has appreciated in value, the amount of the deduction for a donation is dependent upon whether the property is "ordinary income property" or "capital gain property." "Appreciated property" is property whose fair market value at the date of the contribution exceeds the donor's basis for it.

(1) The amount of the deduction for a contribution of ordinary income property is limited to the donor's basis in the property. See ¶ 3038 for further details.

(2) The amount of the deduction for a contribution of capital gain property is dependent upon the type of property that is being donated and, in some cases, upon how the charity will use the property and the character of the recipient. See ¶ 3039 for further details.

(3) If the donated property is both ordinary income and capital gain property, the amount of the deduction is computed by applying both the ordinary income and the capital gain rules. See ¶ 3040 for further details.

Outright donations of property do not produce taxable gains or losses.

#### **● Contributions of partial interests**

If a taxpayer donates less than his entire interest in *appreciated property*, his adjusted basis in such property will be allocated between the interest contributed and any interest not contributed. The adjusted basis of the contributed portion of the property is that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the entire property. The amount of ordinary income and long-term capital gain that must be taken into account is that which would have been recognized as ordinary income and long-term capital gain if such

contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization (.08).

● *Annuity contract*

The owner of an annuity contract who exercised an option under a split life insurance program to purchase term life insurance at discount rates and then transferred all ownership rights to the annuity, including term life renewal, to an exempt charitable organization and made annual cash contributions equal to the annuity premium in exchange for permission to renew the term life policy did not have an allowable charitable contributions deduction (.10).

.01 Reg. § 1.170A-4(c).  
.05 Reg. § 1.1001-1(e).

.08 Reg. § 1.170A-4(c)(1).  
.10 Rev. Rul. 76-1, 1976-1 CB 57.

**¶ 3038 Appreciated Ordinary Income Property.** Appreciated ordinary income property is property which, if sold at market value on the contribution date, would give rise to ordinary income or short-term gains. This includes:

- (1) inventory, stock-in-trade, Code Sec. 306 stock (stock acquired in a tax-free transaction, so that part of the proceeds from a sale is treated as dividend income, see ¶ 3722), works of art, books, and letters and memoranda given by the person who produced them or for whom they were produced;
- (2) capital assets (including stock) held 12 months or less as of the contribution date;
- (3) depreciable property to which the recapture rules apply, but any gain above the recaptured amount is governed by the capital gain property rules, below, if the depreciable property has been held more than 12 months (see ¶ 3040 for treatment of property which would produce both ordinary income and long-term capital gain if sold); and
- (4) property which is subject to the farm loss and development expenditure recapture rules (similar to (3)).

● *Amount deductible*

The deduction for a gift of ordinary income property is limited to the fair market value of the property less the amount that would be ordinary income. In effect, the taxpayer's allowable deduction is thereby limited to his basis in the property. The nature of the charitable donee has no bearing on this limitation. Therefore, if the taxpayer gives a painting (held less than 12 months) to a church, he can deduct only his basis as a charitable contribution. If he painted it or if it had been given to him, he would always be limited to his basis as a deduction.

**Example:** Jones donates stock that he has held for 8 months to his church. The fair market value of the stock is \$1,000, but Jones paid only \$800 for the stock. If Jones had sold the stock rather than donating it to the church, \$200 of appreciation would be short-term gain. Jones' charitable deduction is limited to \$800 (fair market value less the appreciation).

● *Agricultural products and stock-in-trade*

Under the ordinary income appreciated property rules, the deduction of gifts of "ordinary income property" (farm produce, inventory, stock-in-trade, and certain livestock held for less than the long-term capital gain holding period (.05)) is limited to basis.

If a cash-basis farmer donates *raised* crops or produce to a charitable organization, he usually will not have a charitable deduction, since the difference between the fair market value of these items and his basis (zero) is ordinary income. If he donates "purchased" items held for sale in the ordinary course of his farming business, the charitable deduction is reduced by the amount that would not have been long-term capital gain if the property contributed had been sold. If the farmer donates tangible personal property, such as a truck, used in farming or in another business, he must reduce his deduction by any gain

**¶ 3038 Code Sec. 170**

that must be reported as ordinary income because such property is attributable to depreciation (.15).

● *Corporation's contribution of inventory*

A corporation (other than a tax-option corporation under Subchapter S) that contributes inventory (e.g., food, medicines, or clothing) may take into account its basis for the property plus one-half of the property's appreciated value. However, in no event may the deduction exceed twice the property's basis. This applies only to property donated to a qualified public charity or private operating foundation for use in exempt purposes for the care of the ill, needy, or children. It does not apply to property which does not satisfy the relevant requirements of the Federal Food, Drug, and Cosmetic Act, nor does it apply to appreciation treated as ordinary income because of the recapture rules.

● *Government publications*

Capital asset status is denied government publications received by taxpayers without charge (e.g., copies of the Congressional Record received by members of Congress) or at a reduced price. Thus, a taxpayer may not claim a deduction for the full fair market value of such government publications which he contributes to a charity for a use related to the charity's exempt purposes. The same rule applies to any government publication held by a taxpayer in whose hands the basis of the publication is determined by reference to its basis (generally cost) in the hands of a person receiving it free or at a reduced price.

.01 Code Sec. 170(b) and (e); Reg. § 1.170A-4.  
.05 Code Sec. 1231(b)(3).

.15 Code Sec. 1245.

**¶ 3039 Appreciated Capital Gain Property.** "Appreciated capital gain property" is property which, if sold at fair market value on the contribution date, would give rise to a long-term capital gain. It thus includes intangible personal property (such as stocks and bonds), works of art and books that have been purchased by the donor, jewelry, antiques, coin collections, land, and buildings more than 12 months on the date of the contribution. The amount of the deduction for a contribution of appreciated capital gain property is directly dependent upon the type of property being donated, the nature of the charitable recipient, and the use of the property by the recipient charity.

● *General rule*

The amount of the charitable deduction for appreciated capital gain property that is donated to a charitable organization, other than a private foundation (see material under "*Contributions to certain private foundations*," below), is equal to the fair market value of the property at the date of contribution. This general rule applies to gifts of intangible personal property (notably, stocks and bonds), except where the donor elects to claim a deduction based on 60 percent of the appreciation (see below), and to land and buildings (placed in service before 1981) that were depreciated under the straight-line method. It can also apply to tangible personal property, as discussed under "*Donations of tangible personal property*," below.

● *Election for capital gain property*

Gifts of appreciated capital gain property that are made to an organization that qualifies for the 50-percent adjusted gross income deduction (¶ 3026) are subject to a deduction ceiling of 30 percent of an individual taxpayer's adjusted gross income in those cases where the amount of the contribution is based on the property's fair market value (see above). Corporations that make such contributions are subject to the regular limit of five percent (10 percent for taxable years beginning after 1981) of taxable income (¶ 3031).

A special election is available for this type of charitable contribution by individual taxpayers in the year of contribution. The election permits an individual donor to claim a deduction that is based on 50 percent of adjusted gross income, rather than on 30 percent of adjusted gross income. If the election is made, the donor must reduce the amount of the deduction for the property (and all similar capital gain property) by 40 percent of the long-term capital gain that would have been realized if the property had been sold. Thus, the amount of the deduction is limited to the sum of the donor's basis plus 60 percent of the appreciation on the property; it is not the fair market value of the property at the date of contribution.

The election, if made, applies to all capital gain property contributed during a tax year. The election to have the 50-percent ceiling apply cannot be made on an amended return filed after the due date for filing the original return and, thus, should be made on the original return or on an amended return filed on or before the due date for filing the original return (.05).

- *Donations of tangible personal property*

The amount of the deduction for a donation of capital-gain tangible personal property is based on the charitable organization's use of the property. If the organization uses the property in its exempt functions, the amount of the deduction is the property's fair market value at the date of the contribution. However, if the property is not used in the organization's exempt function (called an unrelated use), the donor's deduction is the fair market value at the date of the contribution less 40 percent of the appreciation, or, stated in another way, the donor's basis plus 60 percent of the appreciation. As to gifts by corporations not used for exempt purposes, the deduction is computed by subtracting  $\frac{28}{46}$  of the potential capital gain from the fair market value of the property.

An "unrelated use" is a use which is unrelated to the purpose or function constituting the basis of the charitable organization's exemption under Code Sec. 501 or, in the case of a governmental unit, the use of such property by such unit for other than exclusively public purposes. If a painting contributed to an educational institution is used by that organization for educational purposes by being placed in its library for display and study by art students, the use is related, but if the painting is sold and the proceeds used by the organization for educational purposes, the use is unrelated. If a set or collection of items of tangible personal property is contributed to a charitable organization or governmental unit, the use of the set or collection is not an unrelated use if the donee sells or otherwise disposes of only an insubstantial portion of the set or collection. The use by a trust of tangible personal property contributed to it for the benefit of a charitable organization is an unrelated use if the use by the trust is one that would have been unrelated if made by the charitable organization.

**Example:** George Mint donated a well-framed painting by Stuart Davis (in excellent condition) to the town's fledgling art gallery. The painting is now valued at \$50,000. The cost basis to Mint is \$33,000. Subject to limitation, Mint may deduct an amount equal to the fair market value of the property.

Two months later he donated one of his Durer etchings to the local hospital (to be hung in its lobby). He had purchased the etching in London for \$5,000. At the time of donation, the etching had a fair market value of \$15,000. Mint's deduction is limited to \$11,000 (\$15,000 - 40% of \$10,000).

Tangible personal property under this section includes a fixture meant to be severed from real property.

- *Contributions to certain private foundations*

If an individual makes a contribution of appreciated capital gain property to a private foundation that does not qualify for the 50-percent maximum deduction, or, in other words, to a private foundation that is not a private operating, distributing or community foundation, the amount of the contribution is computed by subtracting 40 percent of the long-term capital gain which would have been realized if the property had



been sold at the fair market value at the time of the contribution from the fair market value of the property. If a corporation makes such a contribution to such a private foundation, the amount of the deduction is computed by subtracting  $\frac{28}{46}$  of the potential long-term capital gain that would have been realized. The reduction has to be made for any type of appreciated capital gain property donated to such a private foundation. In the case of individuals, contributions to such private foundations are subject to the 20-percent adjusted gross income deduction limitation.

● *Contributions of scientific property used for research*

The Economic Recovery Tax Act of 1981 allows corporations, other than a tax-option (subchapter S) corporation (§ 5901), a personal holding company (§ 4573), or a service organization (§ 3937J), a charitable contributions deduction equal to the sum of the corporation's basis of newly manufactured ordinary-income property plus one-half of the unrealized appreciation for qualified research contributions of such property made to a college or university for research purposes after August 13, 1981 in tax years ending after such date (.10). No deduction will be allowed for an amount which exceeds twice the basis of the property.

To qualify as a research contribution, the following requirements must be met:

- (1) the contributed property must have been constructed by the donor;
- (2) the contribution must be made within two years of construction;
- (3) the original use of the property must be by the donee;
- (4) substantially all the use of the property by the donee (at least 80 percent) must be for research or experimentation, including research training in the physical or biological sciences;
- (5) the donee may not transfer the property in exchange for money, other property, or services; and
- (6) the donor must receive a written statement from the donee stating that (4) and (5) above will be met.

.01 Code Sec. 170(b) and (e); Reg. § 1.170A-4.  
.05 Rev. Rul. 77-217, 1977-1 CB 64.

.10 Code Sec. 170(e)(4), added by the Economic Recovery Tax Act of 1981 (P.L. 97-34).

**¶ 3040 Combined Ordinary Income and Capital Gain Property.** All the appreciated property rules come into play when the property donated to charity would produce both ordinary income and long-term capital gain if sold.

The charitable contributions deduction must first be reduced by the amount of gain that would be ordinary income. Then the capital gain property rules apply.

If the property (other than tangible personal property) is given to a private foundation not qualified for the 50 percent ceiling, the deduction is further reduced by 40 percent ( $\frac{28}{46}$  for a corporate donor) of what would have been long-term capital gain. What is left is the amount of the deduction subject to the ceiling of 20 percent of adjusted gross income for individuals. If the property (other than tangible personal property) is given to a 50-percent-deduction charity, the only reduction in the fair market value is the amount that would have been ordinary income from a sale of the property. The remainder is then subject to the 30 percent ceiling for individuals on gifts of appreciated capital gain property.

**Example (1):** Jones, an individual, has adjusted gross income of \$100,000 in 1981. That year he donates a building, with a fair market value of \$80,000, to a foundation not qualified for the 50-percent ceiling. His adjusted basis in the building is \$35,000, and a sale would produce \$15,000 of recapturable depreciation. His contribution is computed as follows:

Fair market value .....	\$80,000
Less:	
Ordinary income .....	\$15,000
$\frac{2}{5}$ of long-term capital gain:	
Fair market value .....	\$80,000
Less:	
Recapturable depreciation .....	\$15,000
Adjusted basis .....	<u>35,000</u>



Long-term capital gain .....	\$30,000	
Multiplied by two-fifths .....	<u>12,000</u>	27,000
Contribution .....		\$53,000

Because his contribution is limited to 20 percent of adjusted gross income, he may deduct only \$20,000 in 1981. The remainder (\$33,000) may not be carried over and is lost as a deduction.

**Example (2):** Assume the same facts as in (1), except that Jones gives the building to a 50-percent charity. The fair market value is reduced by the recapturable depreciation to \$65,000. This is his contribution, subject to the 30-percent ceiling on gifts of appreciated property. He may deduct \$30,000 in 1981 and carry over \$35,000 for five years until absorbed. But the gift is still subject to the 30-percent ceiling in the carryover years.

.01 Reg. § 1.170A-4.

**¶ 3041 Gifts of Use of Property and Other Nontrust Partial Interests.** A charitable deduction is denied for gifts to charity of the rent-free use of property and other nontrust cases where less than the taxpayer's entire interest in the property is contributed (.01). Although the intent of the Treasury Department was that no deduction be allowed for the contribution to charity of the right to use property, the language of Code Sec. 170(f) (3) is couched in broader terms. Simply, a charitable deduction is not allowed for contributions to charity (not in trust) of less than the taxpayer's entire interest except in the following cases (where a deduction will be allowed):

- (1) if the gift is an undivided interest in property, e.g., an undivided one-half interest in a parcel of land;
- (2) if the gift is a remainder interest in a personal residence or farm;
- (3) if a charitable deduction would have been allowed if the interest had been transferred in trust. See ¶ 3061-3064;
- (4) if the gift is made after December 17, 1980, exclusively for conservation purposes and includes the taxpayer's entire interest in real property, other than his interest in subsurface oil, gas, or other minerals and the right of access to such minerals (.015) (see ¶ 3063, below).

**Example:** Taxpayer Brown made a gift to Alta-Real Charity of the rent-free use for one year of 10% of rental space in Brown's Executive Office Suites. Taxpayer Brown may not take a charitable deduction for 10% of the rental value of the building donated to Alta-Real Charity.

Gifts of life insurance policies are subject to the partial interest rule discussed above. Thus, a charitable contributions deduction does not arise from the irrevocable assignment of the cash surrender value of a life insurance policy to a college where the donor retains the right to designate the beneficiary and to assign the balance of the policy, whether the policy was paid-up and the college was given possession or the policy was nonpaid-up and the donor retained possession. Likewise, a deduction is not allowable for the amount of the increase in the cash surrender value attributable to the annual premium paid by the donor on the nonpaid-up policy (.05).

.01 Code Sec. 170(f)(3) and (4); Reg. § 1.170A-7.  
.015 Prior to the amendment of Code Sec. 170(f)(3)(B)(iii) by P.L. 96-541, individuals were allowed a charitable contributions deduction for contributions and transfers made after June 13, 1976, and before June 14, 1981, exclusively for conservation

purposes of a lease on, option to purchase or an easement with respect to, real property granted in perpetuity or a remainder interest in real property.

.05 Rev. Rul. 76-143, 1976-1 CB 63, and Rev. Rul. 69-215, 1969-1 CB 63.

**¶ 3042 Problems in Valuing Gifts of Property.** The amount of a charitable contribution of property, other than money, is based upon the fair market value of the property at the time of contribution. Generally, fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts (.05).

### ¶ 3041 Code Sec. 170